CHE ZAH DIN

v.

NORDIN NAYAN

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[CIVIL SUIT NO. 25-57-1981]
18 AUGUST 1986

TORT: *Negligence - Claim for loss of support - Civil Law Act 1956 - Section 7 - General damages for pre-trial and post-trial losses - Special damages for funeral expenses - Apportionment of award to the dependants.*

Mat Isa bin Lah, while riding a bicycle, was killed due to negligent driving of motor car Registration No. BAA 1441 by the defendant at about 6.15 a.m. on 13 July 1978 near Kepala Batas along the Kedah/Province Wellesley main road. There was no eyewitness to the accident. But the same day at about 6.20 a.m. Mohamed bin Wahab, PW3, found the deceased lying in a ditch and a bicycle nearby. He also recovered near the place of accident a road tax disc for motor car Registration No. BAA 1441, which he later delivered at the Balai Polis. One Abdul Razak bin Ishak, PW4, also lodged a report at the same police station. The I.O. later visited the scene and drew a sketch plan AB7 and took 9 photographs of the motor car BAA 1441 and a bicycle, at the scene.

The plaintiff instituted an action for damages suffered by her and the dependants of Mat Isa bin Lah for loss of support under s. 7 of the Civil Law Act 1956.

The defendant gave his own account of the accident. He stated that while driving to his place of work on 13 July 1978, near the place of accident he noticed at a distance a motor lorry coming from the front with its headlights on. When the lorry approached close to the car, the defendant's vision became blurred. After passing the lorry, he heard a crashing sound. He stopped the car, got out to check, but could not see anything. The front screen of his car was shattered. He thought it could be due to the lorry. Thereafter he drove the car to Kepala Batas and lodged a report. He denied having collided into the deceased. He also denied having noticed any cyclist on his side of the road at or near the place of accident.

Held:

[1] Based on the police sketch plan, the photographs showing damages to motor car BAA 1441 and the rear portion of the bicycle and relying on the defendant's evidence, the defendant was found liable and wholly to blame for negligence as a result of which the plaintiff suffered loss and damages.

[2] The general damages for loss of dependency at RM33,300 were assessed as follows:

(a) **Pre-trial Loss:** Based on the loss of dependency at RM200 per month multiplied by 97 months (period between date of death and date of trial), the amount came to RM19,400 with interest at the rate of 3% per annum from the date of death.

(b) **Post-trial Loss:** The period of 97 months must be deducted from 15 years' purchase which leaves about 7 years. Applying the Annuity Table to a multiplicand of RM200 per month, the amount came to RM13,900 but it carries no interest.

[3] The special damages for funeral expenses were assessed at RM1,000 with interest at the rate of 3% per annum from the date of death.

[4] The award of RM33,300 as general damages was apportioned as follows:

(a) Widow - RM11,100 including interest at 3% per annum on RM19,400; plus RM1,000 for funeral expenses with interest.

(b) Mother - RM2,200.

(c) Four Children - RM5,000 each.

Cases referred to:
Simirah v. Chua Hock Lee & Anor. [1963] MLJ 240
Cookson v. Knowles 2 WLR 978

Legislation referred to:
Civil Law Act 1956, s. 7

For the plaintiff - Triptipal Singh; M/s. Triptipal Singh & Co.
For the defendant - S. Theivanthiran; M/s. Thevin Chandran Siva Wong & Jamal

JUDGMENT

Mohamed Dzaiddin J:

This is a claim by the plaintiff for damages suffered by her and the dependants of Mat Isa bin Lah, deceased, for loss of support under s. 7 of the Civil Law Act 1956 caused by the negligent driving of motorcar BAA 1441 by the defendant on 13 July 1978 at about 6.15 a.m. at or near 11½ milestone Kepala Batas along the Kedah/Province Wellesley main road.

Liability

There was no eye-witness to the accident. The deceased was found by Mohamed bin Wahab, PW3, lying in a ditch at or near 11½ milestone Kepala Batas at about 6.20 a.m. on 13 July 1978. PW3 also found a bicycle nearby at the edge of the road facing Kepala Batas. He also recovered near the place of accident a road tax disc for motorcar BAA 1441 which he later handed it to P.C. Zakaria bin Abdul Kadir, PW1, at Balai Polis, Kepala Batas. One Abdul Razak bin Ishak, PW4, lodged a report at the same Balai Polis *vide* report No. 1637/78. Sgt. Abdul Malek, the I.O. later visited the scene and drew a sketch plan AB7 and took 9 photographs of the motorcar BAA 1441 and a bicycle, at the scene. (FAB1-3).

In his defence, the defendant stated that on the morning of 13 July 1978 he left Sungai Petani at about 5.30 a.m. for work at Sungai Ara, Pulau Pinang where he was an army cook. At about 6.15 a.m. somewhere near Kepala Batas he noticed at a distance a motorlorry approaching from the front with its headlights on. As it was still dark and foggy he used the headlights. When they approached one another his vision became blurred because of the headlights of the motorlorry. Earlier, he signalled the motorlorry to dim its headlights but it took no notice of the signal. After passing the lorry he heard a crashing sound but was not sure from which direction it came from. He stopped the car and got out to check but could not see anything. The front windscreen of his car was shattered. He did not know what caused it but stated that it could be due to the lorry. Despite the broken windscreen he proceeded to Penang and stopped at Beach Street Police Station to lodge a report. He was told to return to Kepala Batas to make the report which he later did. (AB1).

He denied having collided into the deceased. Neither did he notice any cyclist on his side of the road at or near the place of accident.

Based on the police sketch plan, the photographs showing damages to motorcar BAA 1441 and the rear portion of the bicycle and relying myself on the defendant's evidence, I am satisfied that the plaintiff has proved negligence against the defendant as a result of which the plaintiff has suffered loss and damages. I am equally satisfied that the cause of accident was due to the defendant having failed to take sufficient care or notice of the presence of the deceased cyclist on the side of the road and despite having been blinded by the beam lights of the oncoming lorry he had failed to slow down or stop his motorcar so as to avoid colliding into the deceased cyclist. In the circumstances of this case it is his duty to slow down or even come to a standstill and refrain from proceeding further unless it was safe to proceed. (*Simirah v. Chua Hock Lee & Anor.* [1963] MLJ 240)

Counsel for the defendant submitted that on the strength of the scratch mark as shown in the sketch plan (AB7) the point of impact would be at 'F' which according to the scale is 2 feet from the left edge of the road facing Kepala Batas. This indicated that the cyclist was not keeping to his side of the road and might have been travelling towards the centre of the road. It should be borne in mind that the width of the main road is 26' 6". Even assuming that the cyclist was travelling 2 feet away from the edge of the road, I find that in the circumstances of this case he could not be liable for contributory negligence because he was not expected to be travelling closer to the edge of the road at all times. As such he cannot be said to have not taken reasonable care of himself and contributed by his want of care to his own injuries.

For the above reasons, in my judgment, the defendant is wholly to blame.

Quantum - *Loss of Dependency:*

> Today the assessment of damages in fatal accident cases has become an artificial and conjectural exercise

per Lord Diplock in *Cookson v. Knowles* 2 WLR 978 @ 983.

The deceased was 38 years old at the time of his death and was survived by his widow, the plaintiff (PW7) aged 33 years, his mother, Che Wa binti Abu Bakar (PW6) and four children whose ages range from 5 to 15 years. In the Amended Statement of Claim under paragraphs 7 and 8, it is pleaded that the deceased was earning RM350 per month as an assistant to PW4 and about RM10 per day at his coffee stall. The plaintiff claimed RM450 for loss of dependency.

In her evidence, PW7 stated that the deceased was a fishmonger when she married him, but later he worked with PW5 at Kepala Batas market selling beef. In addition, he also operated a stall in front of their house at Paya Keladi Hujung in the afternoon. He normally left the house at about 6.00 a.m. and finished work at Kepala Batas market at 12.00 p.m. and returned home at 2.00 p.m. The distance from Paya Keladi Hujung to Kepala Batas market is about 3 miles. PW7 further stated that the coffee stall business was operated from 2.00 p.m. to 8.30 p.m. However the stall disappeared after his death. According to her, the deceased told her that he was getting RM350 per month as a beef seller, but he did not tell her how much he earned at the coffee stall. She claimed that her husband gave her RM450 per month.

In her evidence, Che Wa (PW6) stated that the deceased was staying with her at No. 1088 Belakang Mesjid, Kepala Batas. She later corrected herself and stated that the deceased spent the nights at his in-laws' house at Paya Keladi. He arrived at her house at Kepala Batas at 6.00 a.m. every morning before selling beef. Under cross-examination, she stated that the deceased returned to his wife's house at Paya Keladi Hujung at about 6.00 p.m. She claimed that the plaintiff used to give her RM100 per month for her expenses since the past ten years before his death.

Having heard and seen the plaintiff (PW7) giving evidence, I am satisfied that she has not impressed me to be a witness whose evidence I would rely upon. In the course of her evidence I found her reading from a prepared note the particulars of income which she was claiming. When I questioned her, she stated that the note was prepared by her daughter. On the question of loss of support at RM450 per month, I find the amount is unreasonable and unsupported by evidence. I do not believe the widow's story that the deceased had a coffee stall in front of his father-in-law's house at Paya Keladi Hujung. She herself did not know how much he earned. Based on the evidence of Che Wa (PW6), the deceased could not be operating the coffee stall between 2.00 p.m. to 8.30 p.m. because he only returned to Paya Keladi Hujung at 6.00 O'clock in the evening. In addition, the evidence that the stall had disappeared soon after the deceased's death cannot be true because there is no reason to close down the stall when she could herself continue the business or employ assistants including her grown-up children or even lease it to someone. The evidence of the widow (PW7) concerning the coffee stall was nothing more than an endeavour on her part to inflate her claim for loss of dependency at RM450 per month.

The estimate of the net contribution to the family income is a question of fact to be determined according to the evidence. Thus, from the evidence as a whole, I am satisfied that the deceased was an odd-job worker with no specific employment. I accept the evidence of PW5 that the deceased was helping him at Kepala Batas market earning a daily wage of RM10 per day or RM300 per month. Thus, having accepted that the deceased's income was RM300 per month, I think it is reasonable for a man of his standing to spend about RM100 per month on himself. Therefore, it is fair and reasonable in this case to assess the loss of dependance at RM200 per month.

The deceased was 38 years old at the time of his death and the useful working life of a normal person would be up to 55 years of age. This leaves him with 17 years of actual working life had it not been for his untimely death, which should be further reduced by two years for contingencies. Hence, the number of years' purchase would be 15 years. In arriving at this figure I have taken into consideration of the probability of the plaintiff remarrying, the age of the mother (PW6) and the children being able to get employment upon attaining the age of majority. The underlying principle is that the loss of support continues not only during their lifetime but ceases soon after one of the probabilities takes place.

Therefore, following the guidelines in *Cookson v. Knowles*, general damages for loss of dependency shall be assessed as follows:

Pre-Trial Loss

This is the loss sustained from the date of death to the date of trial. There are 97 months from date of accident (July 1978) till date of trial (August 1986). Based on the loss of dependency at RM200 per month which is multiplied by 97 months, the amount comes to RM19,400 with interest at 3% per annum from date of death.

Pre-Trial Loss

The period of 97 months must be deducted from 15 years' purchase which leaves about 7 years. Thus, applying the Annuity Table to a multiplicand of RM200 per month, the amount comes to RM13,900 which carries no interest.

Therefore, the total amount of general damages for loss of dependency shall be RM33,300 with interest at 3% per annum on RM19,400 from date of death.

Special Damages

It is fair and reasonable to award the sum of RM1,000 for funeral expenses under this head which carries interest at the rate of 3% per annum from date of death. As for items(ii) and (iii) in para. 7 of the pleadings, I make no order since I have already considered them under general damages.

Costs of this action goes to the plaintiff to be taxed by the proper officer of the Court.

Therefore, I award RM33,300 (excluding interest at 3% per annum on RM19,400) as general damages to be apportioned as follows:

(a) Widow (PW7) - RM 11,100 including interest at 3% per annum on RM19,400. In addition, she is entitled to RM1,000 for funeral expenses plus interest.

(b) Mother (PW6) - RM2,200.

(c) The four children - RM5,000 each and in the case of infants, the sums shall be deposited with the Public Trustee Malaysia for their main tenance and education with liberty to apply.

Also found at [1987] 1 CLJ 57